

Office of the Independent Police Auditor

Monthly Report

November 2012



December 10, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period November 1, 2012 through November 30, 2012.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17*	57	0	0	0

*This number includes one Administrative Investigation with an initiation date in October 2012. The case was not previously reported on but is accounted for below.

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	5
Comments of Non-Complaint	7
TOTAL	17

Citizen Complaints Received per Department

OIPA	0
BART Police Department	5
TOTAL	5

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

During the month of November 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (IA2012-106)	Conduct Unbecoming an Officer	BART PD initiated an investigation	11
2 (IA2012-105)	Performance of Duty	BART PD initiated an investigation	11
3 (IA2012-102)	Courtesy	BART PD initiated an investigation	14
4 (IA2012-101)	Arrest or Detention; Bias-Based Policing; Conduct Unbecoming an Officer	BART PD initiated an investigation	23
5 (IA2012-099)	Bias-Based Policing; Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated and investigation	32

During the month of November 2012, 4 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-104)	Procedure	BART PD initiated an investigation	33
2 (IA2012-103)	Procedure	BART PD initiated an investigation	33
3 (IA2012-096)	Workplace Discrimination/Harassment	BART PD initiated an investigation	32

4 (IA2012-094)	Criminal; Conduct Unbecoming an Officer	BART PD initiated an investigation	35
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During the month of November 2012, 7 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-107)	Bias-Based Policing	BART PD initiated an investigation	11
2 (IA2012-100)	Performance of Duty	BART PD initiated an investigation	29
3 (IA2012-098)	Force; Performance of Duty	BART PD initiated an investigation	31
4 (IA2012-097)	Performance of Duty; Courtesy	BART PD initiated an investigation	34
5 (IA2012-095)	Procedure	BART PD initiated an investigation	35
6 (IA2012-093)	Performance of Duty	BART PD initiated an investigation	39
7 (IA2012-092)	Conduct Unbecoming an Officer	BART PD initiated an investigation	39

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of October 2012, 1 Administrative Investigation was initiated by the BART Police Department that was not previously reported on; it was discovered during an internal review of reports related to the underlying incident that a potential claim of misconduct had arisen:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-109)	Force	BART PD initiated an investigation	44

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2012, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition ⁸	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-047)	<u>Police Officer #1</u> • Theft	<u>Police Officer #1</u> • Theft – Unfounded	179	165
2 (IA2012-031)	<u>Police Officer #1</u> • Performance of Duty <u>Police Officer #2</u> • Untruthfulness • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Sustained <u>Police Officer #2</u> • Untruthfulness – Unfounded • Performance of Duty – Exonerated	235	209
3 (IA2012-025)	<u>Police Officer #1</u> • Unlawful/Improper Detention • Performance of Duty <u>Police Officer #2</u> • Unlawful/Improper Detention • Performance of Duty	<u>Police Officer #1</u> • Unlawful/Improper Detention – Not Sustained • Performance of Duty – Unfounded <u>Police Officer #2</u> • Unlawful/Improper Detention – Not Sustained • Performance of Duty – Unfounded	264	240
4 (IA2012-024)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded	266	242

During the month of November 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-100)	Performance of Duty	Supervisory Referral ⁹	29	18
2 (IA2012-097)	Performance of Duty; Courtesy	Supervisory Referral	34	21
3 (IA2012-095)	Procedure	Supervisory Referral	35	3
4 (IA2012-093)	Performance of Duty	Supervisory Referral	39	19
5 (IA2012-092)	Conduct Unbecoming an Officer	Supervisory Referral	39	4

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	1
Investigations Being Monitored	12
Investigations Reviewed During Current Month	23*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-

Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

⁹ In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.